MONTANA LEGISLATIVE HISTORY

Chapter 188 19 79

Bill H _____ S 427 Original bill & history ✓ C

H. Committee on Bus & Industry			S. Committee on Business & Industry		
Hearing Date(s)	_____	___C	Hearing Date(s)	_____	___C
	_____	___C		_____	___C
	3/6	✓C		2/15	✓C
	_____	___C		_____	___C
Date Out	3/6	✓C		out 2/15	✓

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

CHAPTER NO. 188

SENATE BILL NO. 427

INTRODUCED BY TURNAGE, STORY, R. SMITH, PETERSON

BY REQUEST OF THE ADMINISTRATIVE CODE COMMITTEE

IN THE SENATE

February 9, 1979	Introduced and referred to Committee on Business and Industry.
February 15, 1979	Committee recommend bill do pass. Report adopted.
February 16, 1979	Printed and placed on members' desks.
February 17, 1979	Second reading, do pass.
February 19, 1979	Considered correctly engrossed.
February 20, 1979	Third reading, passed. Transmitted to second house.

IN THE HOUSE

February 21, 1979	Introduced and referred to Committee on Business and Industry.
March 6, 1979	Committee recommend bill be concurred in. Report adopted.
March 7, 1979	Second reading, concurred in.
March 9, 1979	Third reading, concurred in.

IN THE SENATE

March 10, 1979	Returned from second house. Concurred in. Sent to enrolling.
	Reported correctly enrolled.

Senate BILL NO. 427

INTRODUCED BY Turnage, Story, Smith, Peterson

BY REQUEST OF THE ADMINISTRATIVE CODE COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT TO SET STANDARDS FOR ADVERTISING BY A REAL ESTATE BROKER OPERATING UNDER A FRANCHISE AGREEMENT; CLARIFYING RESTRICTIONS ON THE BOARD OF REAL ESTATE'S AUTHORITY TO REGULATE ADVERTISING; AMENDING SECTIONS 37-51-102 AND 37-51-321, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 37-51-102, MCA, is amended to read:

"37-51-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of real estate provided for in 2-15-1642.

(2) "Broker" includes an individual who for another or for a fee, commission, or other valuable consideration or who with the intent or expectation of receiving the same negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or lease of real estate or of the improvements thereon or collects rents or attempts to collect rents or advertises or holds himself out as engaged in any of the foregoing activities. The term "broker" also includes an individual employed by or on behalf of the owner or lessor of real estate to conduct the sale, leasing, subleasing, or other disposition thereof at a salary or for a fee, commission, or any other consideration. The term "broker" also includes an individual who engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract by which he undertakes primarily to promote the sale, lease, or other disposition of real estate in this state through its listing in a publication issued primarily for this purpose or for referral of information concerning real estate to brokers, or both, and any person who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease.

(3) "Department" means the department of professional and occupational licensing provided for in Title 2, chapter 15, part 16.

(4) "Franchise agreement" means a contract or agreement by which:

(a) a franchisee is granted the right to engage in business under a marketing plan prescribed in substantial part by the franchisor;

(b) the operation of the franchisee's business is substantially associated with the franchisor's trademark, trade name, logotype, or other commercial symbol or advertising designating the franchisor; and

SB 427
INTRODUCED BILL

(c) the franchisee is required to pay, directly or indirectly, a fee for the right to operate under the agreement.

~~(4)~~(5) "Person" includes individuals, partnerships, associations, and corporations, foreign and domestic, except that when referring to a person licensed under this chapter, it means an individual.

~~(5)~~(6) "Real estate" includes leaseholds as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or elsewhere.

~~(6)~~(7) "Salesman" includes an individual who for a salary, commission, or compensation of any kind is employed, either directly, indirectly, regularly, or occasionally, by a real estate broker to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate."

Section 2. Section 37-51-321, MCA, is amended to read:

"37-51-321. Revocation or suspension of license -- initiation of proceedings -- grounds. The board may on its own motion and shall on the sworn complaint in writing of a person investigate the actions of a real estate broker or a real estate salesman, subject to 37-1-101 and 37-1-102, and may revoke or suspend a license issued under this chapter when the broker or salesman has been found guilty by a majority of the board of any of the following practices:

(1) intentionally misleading, untruthful, or inaccurate advertising, whether printed or by radio, display, or other nature, which advertising in any material particular or in any material way misrepresents any property, terms, values, policies, or services of the business conducted. A broker who operates under a franchise agreement engages in misleading, untruthful, or inaccurate advertising if in using the franchise name he does not incorporate his own name in the franchise name or logotype or does not conspicuously display, on his letterhead and other printed materials available to the public, a statement that his office is independently owned and operated. The board may not adopt advertising standards more stringent than those set forth in this subsection.

(2) making any false promises of a character likely to influence, persuade, or induce;

(3) pursuing a continued and flagrant course of misrepresentation or making false promises through agents o. salesmen or any medium of advertising or otherwise;

(4) use of the term "realtor" by a person not authorized to do so or using another trade name or insignia of membership in a real estate organization of which the licensee is not a member;

(5) failing to account for or to remit money coming into his possession belonging to others;

(6) accepting, giving, or charging an undisclosed commission, rebate, or profit on expenditures made for a principal;

(7) acting in a dual capacity of broker and undisclosed principal in a transaction;

(8) guaranteeing, authorizing, or permitting a person to guarantee future profits which may result from the resale of real property;

(9) offering real property for sale or lease without the knowledge and consent of the owner or his authorized agent or on terms other than those authorized by the owner or his authorized agent;

(10) inducing a party to a contract of sale or lease to break the contract for the purpose of substituting a new contract with another principal;

(11) accepting employment or compensation for appraising real property contingent on the reporting of a predetermined value or issuing an appraisal report on real property in which he has an undisclosed interest;

(12) negotiating a sale, exchange, or lease of real property directly with an owner or lessee if he knows that the owner has a written, outstanding contract in connection with the property granting an exclusive agency to another broker;

(13) soliciting, selling, or offering for sale real

property by conducting lotteries for the purpose of influencing a purchaser or prospective purchaser of real property;

(14) representing or attempting to represent a real estate broker other than the employer without the express knowledge or consent of the employer;

(15) failing voluntarily to furnish a copy of a written instrument to a party executing it at the time of its execution;

(16) paying a commission in connection with a real estate sale or transaction to a person who is not licensed as a real estate broker or real estate salesman under this chapter;

(17) intentionally violating a rule adopted by the board in the interests of the public and in conformity with this chapter;

(18) failing, if a salesman, to place, as soon after receipt as is practicably possible, in the custody of his registered broker, deposit money or other money entrusted to him as salesman by a person;

(19) demonstrating his unworthiness or incompetency to act as a broker or salesman; or

(20) conviction of a felony."

-End-

SB 427

MINUTES OF THE MEETING
BUSINESS & INDUSTRY COMMITTEE
MONTANA STATE SENATE

February 15, 1979

The meeting of the Business and Industry Committee was called to order by Chairman Frank Hazelbaker on the above date in Room 404 of the State Capitol Building at 10:00 a.m.

ROLL CALL: All members were present.

SENATE BILL 421: Chairman Hazelbaker called on Senator Goodover, sponsor of SB 421, to explain the bill to the Committee. Senator Goodover stated that Senate Bill 421 would allow a business licensed as a consumer loan business by the Department of Business Regulation to make loans up to $25,000. Formerly such a licensee was limited to loans of $7,500.

PROPONENTS OF SENATE BILL 421: Mr. Jerry Loendorf, representing Montana Consumer Finance Association, further stated that the bill also provides a different method of calculating maximum allowable charges for loans over $7,500 than that used for loans of $7,500 or less.

Mr. Harold Pitts, representing the Montana Bankers Association, stated they support Senate Bill 421.

There were no opponents to the bill.

There was a question and answer period from the Committee.

The hearing on Senate Bill 421 was closed.

SENATE BILL 427: Chairman Hazelbaker called on Senator Turnage, sponsor of Senate Bill 427, to explain the bill to the Committee. Senator Turnage stated that this bill was requested by the Administrative Code Committee. This bill fixes statutory standards for advertising by a real estate broker under a franchise agreement and prohibits the Board of Real Estate from adopting more stringent standards. The bill also defines "franchise agreement".

Senator Turnage stated that this applies to Senate Joint Resolution 24 as well as to Senate Bill 427.

Senator Turnage distributed an exhibit from the Department of Professional and Occupational Licensing to the Committee. This exhibit is attached.

Mr. Dennis Rehberg, representing the Montana Association of Realtors, stated they support SB 427.

There was a question and answer period from the Committee.

There were no opponents to the bill.

The hearing on Senate Bill 427 was closed.

DISPOSITION OF SENATE BILL 421: Senator Goodover moved that Senate Bill 421 Do Pass. Senator Dover seconded the motion. The Committee voted that SENATE BILL 421 DO PASS. Senator Regan abstained on the vote and Senator Hager was the only dissenting vote.

DISPOSITION OF SENATE BILL 427: Senator Regan moved that Senate Bill 427 Do Pass. Senator Dover seconded the motion. The Committee voted that SENATE BILL 427 DO PASS. Senator Lowe abstained on the vote.

DISPOSITION OF SENATE JOINT RESOLUTION 24: Senator Lowe moved that SJR 24 Do Pass. Senator Mehrens seconded the motion. The Committee voted unanimously that SENATE JOINT RESOLUTION 24 DO PASS.

SENATE BILL 302: Senator Regan moved that the proposed amendment to SB 302 be adopted. Senator Dover seconded the motion. The amendment to SB 302 was adopted unanimously by the Committee.

DISPOSITION OF SENATE BILL 302: Senator Regan moved that Senate Bill 302 Do Pass As Amended. Senator Hager seconded the motion. A Roll Call Vote was taken on the Do Pass As Amended motion. The Committee voted 6-4 that SENATE BILL 302 DO PASS AS AMENDED.

DISPOSITION OF SENATE BILL 359: Proposed amendments to SB 359 were distributed to the Committee by Senator Regan, sponsor of the bill. Senator Regan moved that the amendments be adopted. Senator Dover seconded the motion. The Committee voted unanimously that the proposed amendments be adopted.

Senator Regan moved that Senate Bill 359 Do Pass. Senator Lowe seconded the motion. A Roll Call Vote was taken on SB 359. The Committee voted 6-4 that SENATE BILL 359 DO NOT PASS AS AMENDED.

ADJOURN: There being no further business, the meeting was adjourned at 11:05 a.m.

Senator Frank Hazelbaker, Chairman

ROLL CALL

BUSINESS & INDUSTRY COMMITTEE

46TH LEGISLATIVE SESSION - - 1979 Date Feb. 15

NAME	PRESENT	ABSENT	EXCUSED
Pat Goodover, Vice Chairman	✓		
Chet Blaylock	✓		
Harold Dover	✓		
Tom Hager	✓		
Allen Kolstad	✓		
Bill Lowe	✓		
John Mehrens	✓		
Bob Peterson	✓		
Pat Regan	✓		
Frank Hazelbaker, Chairman	✓		

STANDING COMMITTEE REPORT

February 15, 1979

MR. President:

We, your committee on Business and Industry

having had under consideration Senate Bill No. 427

Respectfully report as follows: That Senate Bill No. 427

DO PASS

Chairman.

STATE PUB. CO.
Helena, Mont.

498 cont.

appointed to the board must be a tenured faculty member. Copy of his submitted amendment is attached.

There were no opponents to SB 498.

Questions from the committee followed.

Senator Roskie closed on SB 498.

SB 427.

Senator Turnage, sponsor, explained the bill to the committee. The bill would"set standards for advertising by a real estate broker operating under a franchise agreement; clarifying restrictions on the Board of Real Estate's authority to regulate advertising".

There were no opponents to SB 427.

Questions from the committee followed.

Senator Turnage closed on SB 427.

SB 466

Senator Turnage, sponsor, introduced the bill to the committee. The bill would "exempt publication of the Montana Code Annotated from state laws on bid letting and in-state preference for printers".

Diana Dowling, Leg. Counsil, spoke in support of the bill. She said that there is not a printing company in Montana that has the facilities to handle this type of work. The quality of the work done in the past has been poor and slow, but because of the law they had to accept the lowest bid. She said they could get the work done faster and in better quality if this bill passed.

OPPONENTS:

Larry Darcy, Dept. of Administration, arose in protest of the bill. He said it was in the interest of Montana to maintain the bidding system.

There were no other proponents or opponents.

Questions from the committee followed.

Senator Turnage closed.

SB 498

Rep. Cooney moved that the amendment submitted by Dr. Dayton BE CONCURRED IN. Discussion followed. Rep. Stobie said he would like to amend the bill to strike lines 24 and 25 on page 6 and insert 3 in place of 2 on page 6 line 20. Shaun, staff attorney, said this would eliminate anyone who worked a different job for any amount of time during the year such a a teacher who works during the summer. Rep. Stobie withdrew his motion. Shaun Simon suggested that a better way of amending the bill would be to strike the word "permanent" on page 6 line 24. Discussion followed. Rep. Cooney moved that the amendment to strike "permanent" be adopted. A vote was taken and carried unanimously.

Rep. Stobie made a motion that SB 498 be amended as follows:
Page 9, lines 1 and 2,
Following: "building"
Insert: "which the state or any political subdivision thereof maintains"
Page 9, line 3
Following: line 2
Strike: "maintained" Discussion on the motion followed.

A vote was called on the motion and carried unanimously.

Rep. Stobie made a motion that SB 498 AS AMENDED BE CONCURRED IN. Discussion followed. A vote was taken and carried 14 - 2 with 3 absent. Rep. Robbins and Harper voted no. Rep. Cooney will Carry the bill in the House.

SB 427

Rep. Stobie moved that SB 427 BE CONCURRED IN. Following discussion a vote was called and carried unanimously. Rep. Harper will carry the bill in the House.

SB 466

Rep. Cooney moved that SB 466 NOT BE CONCURRED IN. Discussion on the motion followed.

Rep. Kessler made a sub-motion that SB 466 BE CONCURRED IN. Following discussion a vote was called and carried 14 - 2 with 3 absent. Rep. Cooney and Rep. Spilker voted no.

SENATE BILL NO. 427

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REFERENCE BILL

(c) the franchisee is required to pay, directly or indirectly, a fee for the right to operate under the agreement.

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(17) intentionally violating a rule adopted by the board in the interests of the public and in conformity with this chapter;

(18) failing, if a salesman, to place, as soon after receipt as is practicably possible, in the custody of his registered broker, deposit money or other money entrusted to him as salesman by a person;

(19) demonstrating his unworthiness or incompetency to act as a broker or salesman; or

(20) conviction of a felony."

-End-